

APR 19 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROBERT STEVEN BUFF,

Petitioner-Appellant,

v.

MICHAEL BUDGE, et al.,

Respondents- Appellees.

No. 05-16078

D.C. No. CV-N-02-0292-ECR

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Edward C. Reed, Jr., District Judge, Presiding

Submitted April 7, 2006**
San Francisco, California

Before: BEEZER and FISHER, Circuit Judges, and TIMLIN, Senior District
Judge.***

Buff appeals the district court's denial of his petition for writ of habeas
corpus pursuant to 28 U.S.C. § 2254, challenging his jury conviction for first

*This disposition is not appropriate for publication and may not be cited to
or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

**This panel unanimously finds this case suitable for decision without oral
argument. *See* Fed. R. App. P. 34(a)(2).

***The Honorable Robert J. Timlin, Senior Judge, United States District
Court for the Central District of California, sitting by designation.

degree murder with the use of a deadly weapon. On appeal, Buff asserts that the district court erred in denying his claim that the Nevada Supreme Court improperly rejected his contention on appeal that the Nevada trial court violated his Sixth Amendment Confrontation Clause rights by admitting into evidence at trial the transcript of the preliminary hearing testimony of an available witness, James Whiteface.

Because the parties are familiar with the facts, we do not recite them in detail. We review de novo the district court's decision to grant or deny a 28 U.S.C. § 2254 habeas corpus petition, *Jensen v. Pliler*, 439 F.3d 1086, 1088 (9th Cir. 2006), and may affirm the district court for any reason supported by the record, even if the district court's reasoning is faulty, *United States v. Ortega-Ascanio*, 376 F.3d 879, 885 (9th Cir. 2004).

We reject Buff's contention that the admission of the preliminary hearing transcript of witness Whiteface's testimony as evidence at trial violated his Sixth Amendment Confrontation Clause rights because Whiteface testified and was cross-examined at trial. *See Crawford v. Washington*, 541 U.S. 36, 59 n.9 (“[W]e reiterate that, when the declarant appears for cross-examination at trial, the Confrontation Clause places no constraints at all on the use of his prior testimonial statements.”).

Accordingly, we affirm the district court's denial of Buff's petition for a writ of habeas corpus because the Nevada Supreme Court's decision affirming Buff's conviction did not "result in a decision contrary to . . . clearly established Federal law, as determined by the Supreme Court of the United States," nor was it "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." *See* 28 U.S.C. §§ 2254(d)(1)-(2).

AFFIRMED.